

MINUTES
PLANNING COMMITTEE

June 4, 2014

A meeting of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Tim Bynum, Chair, at the Council Chambers, 4396 Rice Street, Suite 201, Lihue, Kaua'i, on Wednesday, June 4, 2014, at 9:22 a.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock, Sr.
Honorable Ross Kagawa
Honorable Mel Rapozo
Honorable JoAnn A. Yukimura
Honorable Tim Bynum
Honorable Gary L. Hooser, Ex-Officio Member
Honorable Jay Furfaro, Ex-Officio Member

The Committee proceeded on its agenda item, as follows:

Bill No. 2461, Draft 1 A BILL FOR AN ORDINANCE TO AMEND
CHAPTER 8, KAUAI COUNTY CODE 1987, AS
AMENDED, RELATING TO THE COMPREHENSIVE
ZONING ORDINANCE (*Amendments to the Shoreline
Setback Ordinance*) (This item was deferred to
July 2, 2014.)

Chair Bynum: There has been a lot of work on this Bill and I think the intention is to defer it until July 2, 2014 but we will receive any public testimony at this time. Are there any registered speakers?

LORI L. MARUGAME, Council Services Assistant: We have five (5) registered speakers. The first registered speaker, Mark Watase followed by Barbara Robeson.

Mr. Furfaro: Committee Chair, may I have the floor for a moment?

Chair Bynum: Yes.

Mr. Furfaro: I made an error. There was a request that came in to go to Economic Development. I would suggest you take all this testimony and since it is going to be deferred then we go to Economic Development as originally scheduled.

Chair Bynum: Okay, thank you.

Mr. Furfaro:

Thank you. My apologies for my error.

Chair Bynum:
for the record.

Good morning. If you could state your name

There being no objections, the rules were suspended to take public testimony.

MARK WATASE: My name is Mark Watase. I apologize because this is my first time coming to testify. I thought I was going in front of the Planning Committee and I did not realize that it was the Council. Anyway, I have a property on the beach on Moloa'a and I have been enjoying the beauty of Moloa'a Bay for forty-five (45) years. I watched the sand shift from one area to another, within the bay, and back again. In August of 2003, a thirty to thirty-five foot (30' – 35') wave took the sand away where I had a five foot (5') drop from the top of the vegetation to the exposing coral rocks. It took ten (10) years for the sand to come back and this year, we had a fifty foot (50') wave from the northwest which brought more sand back that what we had before. Moloa'a Bay is like a fishbowl and the sand on our beaches have nowhere to go except on the beaches in Moloa'a Bay. We have erosion and accretion within the bay. In essence, there should be no permanent change in the shoreline at Moloa'a. That is my opinion. What I really want to comment on Bill No. 2461 is that I believe this Bill is based on a study on the Kaua'i Coastal Erosion Study of 2010 by the University of Hawai'i Coastal Geology Group of the School of Ocean and Earth Science and Technology. The result of this study shows Moloa'a having an erosion of 0.7' per year. After studying their photograph and results, I believe their assumptions are in error. I spoke with Dean Fletcher of the School of Ocean and Earth Science and Technology and he asked that I contact Ruby Pat *[sic]*, I think I got that name wrong, their contact for Kaua'i and work with her to correct the error, if any. Dean Fletcher also suggested that this Bill have a provision to allow for corrections by others with the same problems that I found. Thank you.

Chair Bynum:

Thank you. Councilmember Rapozo.

Mr. Rapozo: I just...and I am sorry and thank you for being here today. What was that last statement? The last sentence with the...did you say corrections?

Mr. Watase: Yes, in other words I showed him where the study is made with the island of Kaua'i with photographs on the beaches, okay? I took Moloa'a Bay out and they have cross section perpendicular to the beach. They determined whether there is erosion or not and determined the rate of erosion. They said the average, for Moloa'a is point seven feet (0.7') per year. They took cross section in the area that as far as I can remember for forty (40) years was all rocky. It was outside the bay actually and but according to Dean Fletcher, he said one hundred (100) years ago they had sand and so consequently they show an erosion of that area

for one point three to one point eight feet (1.3' – 1.8') per year but you cannot have erosion in a rocky area because they have boulders in the front. So he asked that, maybe there are others because of the way they do their study, taking photographs and that there may be others finding the same problem as I have because I do not know of any area except in front of my home and Moloa'a Bay. I know what has happened there for forty (40) years but other than that what happened prior to that I have a photograph of 1924 taken of the bay and there was a lot of sand in front of my house but the sand is not there anymore. What happened to the sand, I do not know but I just brought this thing up to them and it...I brought it up yesterday so he told me who to contact so we are going to work together to see how we can correct that.

Mr. Rapozo: Thank you for that information. I think that was my concern a meeting or two (2) ago that the study... and we paid Mr. Fletcher a lot of money to do this study and some of the areas were the best estimate based on available photographs. It could have been winter, summer, fall...

Mr. Watase: High tide, low tide...

Mr. Rapozo: Right and that was my concern. You just grab the most...the only photograph you have and you put that into the computer and it is going to generate an assumption that could be entirely wrong and that has always been my concern from that study.

Mr. Watase: But with what they worked with, it was pretty good. I assumed that they got things from one hundred (100) years ago which shows on the data that outside the bay on the right hand side showed that it was all rocks. They showed that at one time there was sand but for the past forty (40) years there was no erosion. When they calculated one hundred (100) years to now, it showed that the erosion is such that it is one point eight foot (1.8') per year. That is impossible.

Mr. Rapozo: Right.

Mr. Watase: I am going to try work with him on that and try to come up with something that is fair.

Mr. Rapozo: The critical component, I think, missing from the study was that local knowledge. The landowner....

Mr. Watase: In the last forty (40) years, that is what I observed and my observation is such that I was not concerned about the beach because nothing ever happened, right? Until 2003 when a wave just washed us out but then it came back and so whatever goes away I felt that it comes back simply because of the way Moloa'a Bay is.

Mr. Rapozo: Right, and every bay is different. Thank you very much.

Chair Bynum: Councilmember Yukimura.

Ms. Yukimura: Mr. Watase.

Mr. Watase: Yes.

Ms. Yukimura: Hi. Thank you for coming. So you will be contacting Ruby Pap? It is p-a-p. And you will be working with her? She is part of our shoreline setback working group that is working on the law. One of the reasons why this is a setback law is because if a big wave comes every ten (10) years and the house is within the wash of the waves it can be a problem for the homeowner.

Mr. Watase: Well I have had numerous times where the waves came in, covered my whole property and went up to the County road. When you look at the State law as to where the shoreline is, it is the upper reaches of the wave. I asked, "Does that mean that my entire property is part of the shoreline?" I think in the last ten (10) years maybe it came up about four to five (4-5) times. The waves that...I do not know about waves but I noticed that certain types of waves eat the sand away but certain type of waves bring the sand back. So, I am not an expert but it is just what I noticed.

Ms. Yukimura: Very good that you will be working with Ruby.
Ruby Pap, Ms. Pap. Thank you.

Mr. Watase: I have not met her but I hope to contact her and...

Ms. Yukimura: You have her contact information?

Mr. Watase: I had her E-mail. I E-mailed her yesterday. If I had her phone number, I would call her today. I have time today so I could go to Moloa'a and show her what I was talking about but I do not have that information. I will do it some other time.

Ms. Yukimura: Oh, okay, very good. I am sure she will respond. Alright, thank you.

Mr. Watase: Thank you for hearing me.

Chair Bynum: Thank you very much.

Mr. Kagawa: I have a question.

Chair Bynum: Mr. Kagawa.

Mr. Kagawa: The County road you are talking about is the one that runs all the way to the stream?

Mr. Watase: Yes.

Mr. Kagawa: It comes to a dead end?

Mr. Watase: My house is right on that short road that goes towards the stream and it went right up and my neighbors it went right underneath his house and went right up to the road.

Mr. Kagawa: That is unbelievable because I remember camping there and I cannot picture a wave coming all the way up.

Mr. Watase: My property is fifteen feet (15') above the sea level and it came right up and right inside.

Mr. Kagawa: There are some boulders, right? In front?

Mr. Watase: There is a reef in front of my house and they said that the erosion is over a foot a year. I said "If there was over a foot a year for forty (40) years that beach should be...my house should be gone already.

Mr. Kagawa: Thank you, Mark. I understand.

Mr. Watase: May I say something personal?

Chair Bynum: Yes.

Mr. Watase: You are Ross Kagawa?

Mr. Kagawa: Yes.

Mr. Watase: Played for University of Hawai'i (UH)?

Mr. Kagawa: Yes.

Mr. Watase: I saw your homerun, your last at bat.

Mr. Kagawa: Thank you.

Mr. Watase: It went in the trees.

Chair Bynum: Thank you very much for sharing that.

Mr. Rapozo: He is available for autographs after.

Chair Bynum: Next registered speaker.

Ms. Marugame: Next registered speaker, Barbara Robeson followed by Caren Diamond.

Chair Bynum: Good morning.

BARBARA ROBESON: Good morning, Mr. Bynum and other Planning Committee Members. Thank you for having this on your agenda again. I guess it is like a year and a half now. I had handout testimony. It is pretty much the same as what I handed out to you folks on April 9, 2014. With a couple of updates on my personal comments of course. At the Council meeting on April 9, 2014, I submitted testimony requesting information as to whether some portions of this particular Shoreline Bill No. 2461, Draft 1 were legal or not and the public continues to be uninformed as to this question of legality. And of course you do not have to answer these questions, I know that is not appropriate for you do so but have any Councilmembers requested information regarding the legality questions from the County Attorney's Office? Has the County Attorney's Office replied? If so, what was the opinion? I assume that if the deletion of activities and the wording of applicability are legal, that information would have been shared with the public. But on the other hand I also assume that if the information was not shared with the public then the deletion and wording were not legal. I am not going to go into the rest of this information on activities and applicability on my testimony as we have already been through it before but anyway those questions are still on my front burner, and I really would request full disclosure of that. Thank you very much.

Chair Bynum: Thank you, Barbara. Any questions? Seeing none, next speaker.

Ms. Marugame: Next speaker is Caren Diamond followed by Carl Imporato.

CAREN DIAMOND: Aloha, Council. Caren Diamond.

Chair Bynum: Good morning.

Ms. Diamond: The Shoreline Setback Ordinance we have right now has been portrayed all over the islands and in many places as being one of the best. One of the best that exists and one of the most progressive not only in the islands but it is a model. It has been used and recognized as such. When I look at the changes that have happened in this proposed Bill No. 2461 before you it weakens it. It takes what was a very good Bill and makes it completely un-understandable, it takes the best of it and convolutes it, and really as I read through what is now written it is really un-understandable and so I would as...I know a lot of scientist worked on it and there was credit given for community members, Barbara and myself. Of course, I have spent a lot of time on it but let us not mistake that our ideas did not...a lot of them...the best of them did not come through in here. The applicability is the most important section in this Bill. Who is it applicable to? And it should be applicable to everybody along the shoreline but it is not and between the last meeting and this meeting the applicability section got worse not better and so when we have...we had one (1) other meeting, predominately you have developers' interests in those meetings. Barbara and I are in them as well. Chris Conger is there representing the developers. While he used to work for the State he is now working for the private engineering companies but that benefit off our shorelines and beaches needing work. If they are left in their natural state, they do not need engineering. I am not sure how we will ever get to a different result in an alternative group setting that includes developers and their interest and there are more of them then there are of us and we will never get a Shoreline Setback Ordinance that reflects public interests and protection of our coastal areas as was intended in Hawai'i Revised Statutes (HRS) 205A. Coastal protection of our beaches are the most important thing that we have on Kaua'i and so when we look at making exemptions to applicability just because you are on a rocky coastline, are there no hazards on rocky coastlines? There were no erosion studies but that does not translate to being no hazards and so when our shoreline setback rules have to address all coastal hazards or they should address all coastal hazards on Kaua'i not just erosion and so when you are looking at this Bill I would ask you to actually all not delegate the authority and responsibility to some other group but to look at it carefully and make sure that you do understand it and if not make sure that what comes out is understandable. Everyone should be able to read it and know what the setback applicability to them would be.

Ms. Marugame:

Three (3) minutes.

Ms. Diamond: Without it being in a way that you really cannot understand at all unless you are a scientist and it should be plain and it should be understandable. I want to go so far as to say that you might consider just receiving this Bill and starting again or keeping the Bill that exists right now and making the few minor changes that need to be made to it but I think that this has gone way far in a direction that does not benefit anybody.

Chair Bynum: Thank you, Caren. Councilmember Chock has a question.

Mr. Chock: Thank you, Caren. I appreciate all of the time and effort that you have put into it, along with everyone else. Yesterday we had a meeting...was it Hawai'i Green Growth...that group there that did a briefing and one of the great things that came out of that was that what they do is convene all stakeholders to come together about what they can agree on. There has been a lot of work on this and I know there is one (1) area, this applicability, that is really the source of just not being able to come together. When I talk to the Planning Department there are pieces in here that they would like to see moved on so that they can do their work, would you be in agreement that we should pass what we can pass, take out the pieces that we cannot, and either leave it as a whole as it is or continue to work on it separately?

Ms. Diamond: I think the way that it is purposed to be written now it has pieces all over the place and it was not ever read in its entirety and it does not follow through in an understandable way. I think if you take the Ordinance that exists and work on making changes to that we might have a better chance than taking amendments, to amendments, to amendments, to amendments.

Mr. Chock: Okay. Thank you.

Chair Bynum: Councilmember Yukimura.

Ms. Yukimura: So, Caren, you would be happy if we went to the original applicability section?

Ms. Diamond: That is okay.

Ms. Yukimura: And so that is the amendment that I am working on for our consideration at our next meeting.

Ms. Diamond: Thank you. It is much appreciated.

Chair Bynum: Other questions for Caren? I have a couple. I am reading all of today's testimony with interest because I was here for the first Bill. We almost came to consensus but there were amendments that were contested and the votes fell where they did and of course that is our process. This collaborative process is fine to bring it as close as possible and this is my opinion. Do you agree with that? But then the final decision making happens at this body and it is public process if we cannot come to complete consensus to air that and have that dialogue in public and so I know that I want to move this process to a conclusion expeditiously and see how much we can agree on. Do you agree with this?

Ms. Diamond:

I think that is fine.

Chair Bynum: That is what we do. You meet collaboratively, you have developers, landowners, community advocates, specialists...see how close you can come but do we always expect that we are always going to come to a consensus? No, that is what decision making and democracy is for. I am not worried about that process going to there but let us do everything we can. Thank you very much.

Ms. Diamond:

Thank you.

Ms. Marugame:
followed by Anne Punohu.

Next registered speaker, Carl Imparato

CARL IMPARATO: Aloha everyone, my name is Carl Imparato and I live in Hanalei. In April I testified about a number of the significant problems in this Bill and today I would like to focus just on the two (2) most critical issues as they indicate to me that this Bill is headed in a very bad direction. First, the proposed applicability language would wrongly exempt certain shoreline properties from almost all of the requirements of the Shoreline Setback Ordinance. In April I testified that the proposed changes to this language would exempt most coastal lands located twenty feet (20') above a rocky shoreline from virtually all of the requirements of the Ordinance and afterwards I was told that I was reading the language of the Bill incorrectly and that I was misinterpreting the intent of that paragraph. Well I would like you to know that I have reread this language a number of times and I continue to conclude that my interpretation is correct so at a minimum if the wording is so subject to supposed misinterpretation, it needs to be clarified and changed. But more importantly is the substance and I believe it would be wrong to exempt entire classes of properties and activities from almost all of the requirements of the Ordinance. If the reported problem is to eliminate the need for unnecessary shoreline certificates because a structure is way, way back from the shoreline than that can be dealt with through some focused language rather than just eliminating all applicability of the Bill to these classes of properties and in my written testimony I have proposed some language in the footnote at the bottom that would focus just on that reported problem which is the only one I have heard. So that is the first issue. And the second issue is, to me living in Hanalei even more important is the proposal to reduce the shoreline setback requirements for large lots from one hundred feet (100') to somewhere between forty to sixty feet (40' - 60'). Now under section 8-27.3c of the current Comprehensive Zoning Ordinance (CZO) the shoreline setback parcel requirements for parcels with an average depth of two hundred feet (200') or more is one hundred feet (100') minimum. Under this Bill here the required setback would be reduced to just forty feet (40') for any structure on a parcel that is on or above a rocky shoreline that was not included in the coastal erosion study and if it is not a rocky shoreline

then it would be sixty feet (60'). You are taking a one hundred foot (100') setback requirement that is in the existing law, changing that to forty to sixty feet (40' – 60') and if this language remains in the final Bill the County Council would be walking away, I believe from its duty to protect the public interest in preserving scenic coastal resources. Remember that HRS 205A is not just about coastal hazards. Read some of the objectives and policies, I have sighted some of them in my written testimony but among them ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline. HRS 205A is not just about hazards. It is about other things that are very important. When you look at this language change the worst thing is that the proposed language appears to be tailor made to facilitate Pierre Omidyar's controversial scheme to line the ridge above the Hanalei River with dozens of "spacious, luxurious vacation rental structures". I have not met one (1) person except people who stand to benefit directly from the scheme who believe that lining the ridge with this kind of development would be a good idea.

Ms. Marugame:

Three (3) minutes.

Mr. Imparato: But the proposed rewording of this section of the Bill would gut one (1) of the main lines of defense that we have against Omidyar's scheme because it would allow that development to be located forty to sixty feet (40' – 60') from the shoreline. Forty feet (40') rather than one hundred feet (100') and so basically it is allowing that kind of development if this language stands to basically be located twice as close to the ridge and the shoreline as the current Bill would require and so I do not believe it could be in the public's interest to amend this Shoreline Setback Ordinance to include, what I view what as sweetheart language that allows this Hanalei ridge development to move twice as close to the shoreline and the ridge and of course that language would not just apply to Pierre Omidyar's property. I think that the result would be that much of the rest of Kaua'i's undeveloped coastal shoreline would be scared by projects that would be coming in closer to the ocean. In conclusion, I want to say that I think that it is unfortunate that Bill No. 2461 working group appears to be dominated as Caren has mentioned by representatives of developers because they outnumber the representatives of the public interest by 5:2. That dominance, I think is reflected in the language of this draft of the Bill and therefore I think it is up to the County Council to protect the people on the island of Kaua'i from the schemes and the lobbying of the Omidyars and the Land Use Research Foundations and interests the view Kaua'i as another resource to be exploited. I ask that you not gut the applicability language of the existing Ordinance. Basically, stick with the language that exists already and take a surgical approach to dealing with the problem of unnecessary shoreline setback certifications if that is legal and there have been questions about the legality. Secondly, I ask that you please retain the existing one hundred foot (100') setback

requirements for all large parcels because changing that would have major consequences and I thank you for your time.

Chair Bynum: I think there will be some questions and one (1) just jumps out at me, Carl. I appreciate your testimony and it is very useful for me to be able to follow up with these questions but the question that just leaped out at me is when applied directly to a midair part of that parcel is on the ocean but these things along the ridge are on the riverbank. The shoreline does not extend down the river, right? So how would the shoreline...this Bill apply to the ridge above the river?

Mr. Imparato: I believe that...well certainly part of that development is along the shoreline.

Chair Bynum: Right, no question.

Mr. Imparato: And that shoreline curves around the...up to the river which is part of the Special Management Area (SMA).

Chair Bynum: Right.

Mr. Imparato: So the SMA does go up the river a good ways, it is special management area and HRS 205A applies to I believe that portion of the lot as well.

Chair Bynum: It was the certified shoreline that was confusing me because this is related to setbacks from the certified shoreline, right? And there are not usually certified shorelines along rivers. Everyone I have ever seen the shoreline crosses the river mouth and continues down the coast. I can follow up later. That just leaped out at me.

Mr. Imparato: The shoreline does go partly around that project and that is the most critical area actually right at the tip.

Chair Bynum: My other question was about process. You said to the Committee that there was a 5:2 out numbering but again it is like this is a working group to try to share ideas and consensus and it is not a decision making group. Are you saying that we should not pursue this kind of dialogue prior to these complex bills and there is something wrong with that process?

Mr. Imparato: No, not at all. I think that both sides need to have representation but at the last Council meeting that I testified at in April there was a feeling that this group was a well balanced group and when you look at five (5) developer representatives on there with just Barbara and Caren trying to represent the public interest, I think that is why we end up with the language that we have.

Chair Bynum: Well you have answered my primary question. You are not objecting to that process you are just saying to reflect that it is balanced but you still think that is a valuable process to engage in, correct?

Mr. Imparato: Correct. Both sides need to have their say and to drafting legislation.

Chair Bynum: Okay, thank you very much for your testimony. Questions for Carl? Councilmember Yukimura.

Ms. Yukimura: Hi, Carl. Can we get a copy of your testimony?

Mr. Imparato: I believe that it was already copied and sent around.

Ms. Yukimura: Okay, thank you. I want you to know that at the last working group meeting, we took up your points about applicability and in fact I suggested conceptually how we would address that. It was a very important point and so as I mentioned to Caren we are working...I have an amendment that I am...I talked about it in the group conceptually, it was at the end of discussions and we will be now considering actual wording at our next meeting. So, I want you to know that we have taken our comments with great seriousness and are actually proposing changes out of it. And I also want you to know that this working group does not make its decisions...in fact, it does not make it decisions and it certainly does not make decisions by vote. It is an assistance to the two (2) Councilmembers who were trying to usher this program, or this Bill through and that started as former Vice Chair Nadine K. Nakamura and myself. She has left so I have been working with the group and Councilmember Chock has joined us and we are not making decisions by vote. We are making decisions by reason and argument and it is the decision of the Councilmembers who will be proposing amendments to this body who will make the ultimate decision, just for your information.

Mr. Imparato: Thank you. Firstly, I appreciate that you are working on the applicability language. I can only testify here on what was before as "draft 1". As to the Council making amendments, I have confidence in the Council that if there is something that is very "developer centric" and harmful to the public interest, that this Council with then basically make whatever corrections need to be made. I hope.

Ms. Yukimura: That is absolutely correct because we are the decision makers around this table. Now my last question is, are you assuming that a rocky shoreline erodes?

Mr. Imparato: Not necessarily and that is why my point is that whether or not it does erode, the importance of having a large setback for large lots is not necessarily based on the erosion natural hazard, it is based on some of the other policies and objectives of HRS 205A that I have cited which are protection of scenic resources as well.

Ms. Yukimura: Well, scenic resources are not related to ocean hazards but we are taking into a count other coastal hazards. We have added another twenty feet (20') to every shoreline setback for that reason but we do have to do it by some rational basis when we determine setback and the rational basis for setback is erosion plus additional buffer for...and that are the rules that apply to all properties.

Mr. Imparato: I think that makes good sense when you are talking about eroding shorelines. My point was that we should not view the Shoreline Setback Ordinance as having a single objective which is to protect against natural hazards, that it has other objectives including, I guess even the Council's finding that the shoreline environment is one of Kaua'i's most important economical and natural resources. Beaches, and coastal areas are part of the public trust that need to be protected and put into the context of HRS 205A.

Ms. Yukimura: Certainly, but we have different tools for protecting it and another tool is the SMA management permit and all of this has to be based on rational data or policy so that is what we are trying to do. Thank you very much.

Mr. Imparato: My only point was that you have the current one hundred foot (100') setback in the law and if you want to put that setback into the SMA policies, fine but if you walk away from it today and leave that regulatory gap in there and tomorrow Omidyar comes in with his project there is no...

Chair Bynum: Excuse me. Thank you for that.
Councilmember Kagawa, you have questions?

Mr. Kagawa: No.

Chair Bynum: Thank you. Anything else for Mr. Imparato?
If not, is there another speaker?

Ms. Marugame: Anne Punohu.

Chair Bynum: Anne Punoho. Annie. Good morning.

ANNE PUNOHU: Aloha, my name is Anne Punohu. Nice to see you, it has been a while since I have been in front of you. As one of the original

members of the general public that originally fought for the original Bills of all of this stuff, after many, many, many, many years of going to Planning Commission meetings and whatever, I want to reiterate the testimony of the last three (3) speakers but I also want to bring something to light here. You are opening a door. A door that we do not need to be opened. I know this is a working group where people are working and we have people at the table and we have dialogue. I am the last person to say let us not do that. However, I have been saying for years, and years, and years that we do not have equitable representation on any of these groups. So far as I have ever seen the County for the last decade. I think that is an issue. When we look at the representation of developers, they are asking you to open a door wide for them. If you capitulate to what they want in the current form of this Bill, then you will be seeing a Waikiki skyscraper on the bluff very soon in the next twenty (20) years on this island. Which direction do we want to take this island in? We have a good Ordinance on the books. We have a good shoreline setback. I suggest clearly to go to the original, what is on the books, and tweak whatever is needed. I find this to be really a step backwards. I find the legality to be questionable. Also, too when you look at bluff situations, and somebody mentioned, well is there damage? Well let us see, how many of us went through Iwa, and how many of us went through 'Iniki. When you have something on a bluff it is not going to last in a three hundred (300) mile per hour (mph) hurricane and we are now sitting here in El Niño. When we have more buildings on this island, you put the County at liability and risk for collateral damage from materials from buildings that blow or are washed away or are damaged so if we are talking about disaster and we are talking about literal damage, I think that is a very clear and valid argument. As far as Pierre Omidyar goes I will tell you that the community would find that to be the biggest offense and insult to what is the north shore and Hanalei which I have ties to, my family is there, and I have lived there for decades. I think it would be probably the dumbest move that anybody could every make is to put anything there; what he is planning. But that is not just about him, it is not just about the developers that are coming forward to you today in this Bill to change setbacks in their favor. It is who is going to come forward in the future when none of you sit on this Council. We are talking today about the future of our island. Please do not open an unnecessary door and keep the necessary doors open.

Ms. Marugame:

Three (3) minutes.

Ms. Punohu:
that carefully. *Mahalo*.

Tweak the locks if you have to but think about

Chair Bynum:

Thank you. Any other registered speakers?

Ms. Marugame:

There are no other registered speakers.

Chair Bynum:
on this Bill?

Is there anyone else who would like to testify

The meeting was called back to order, and proceeded as follows:

Chair Bynum: Discussions from Councilmembers and I believe that we will entertain a motion to defer. Councilmember Kagawa.

Mr. Kagawa: I just have some short comments. First of all, I would like to thank all of the members for their participation in the process. Thank Managing Director, Nakamura for working on it initially and Councilmember Yukimura who then took charge and now she has involved Councilmember Chock, so thank you for your work on this very difficult Bill. One of the things I heard that sort of bothers me a little bit is that if we do not totally agree with the people from the community who are helping that we are being developer centric and I think that is not accurate. I believe that Councilmember Yukimura's statements that the Committee is trying to find a Bill that is based on reason, rationale, the science, and the studies, I think that is a strong Bill. The reason why I say this is that while I think that a lot of the points raised by the public are valid regarding specific issues on the north shore, I believe the island is much more than just the north shore. We need a strong Shoreline Setback Bill that is based on reason, rationale, science and nobody has really figured out exactly how the shoreline is eroding. It is like what is happening with global warming. A lot of assumptions need to be made, it is not an exact thing and it is very difficult but that is why you use experts because they have the best possible educational guess as to what is happening and again I say I believe that the concerns about the north shore, how the effect of the Bill on the north shore is bad but there is more than the north shore involved in this whole island and the Bill and that is my only concern and that is why I favor something based on reason or rationale. Thank you.

Chair Bynum: Other comments? Councilmember Rapozo.

Mr. Rapozo: Thank you. I have a question for staff and I believe after the April 8, 2014 testimony of Barbara Robeson, I am assuming that the meeting was April 9, 2014 or so. She had raised some questions regarding the legality that she referenced again today and I thought I had asked for an opinion as to its compliance with HRS 205A. I am not sure...I do not recall getting anything back. I am not sure if we formally submitted the request. But if you look at the April 8, 2014 letter from Barbara and I know that we referenced it because I highlighted it on my notes. I just do not remember a response coming back. I am not going to say that we sent it because I am not sure. If we have not, can we send over a request because I share some of the concerns regarding the activity. I share some of the concerns that Carl brought up about the SMA guidelines as well as the objectives and policies because I think those are there for a reason and I just want them to take a look at it and give us a legal opinion as far as I do not want to pass an Ordinance that conflicts with State law. I just do not want to do that. I want to make sure that our attorneys

have an opportunity to address those concerns and get it to us. I also...Carl talked about Omidyar...I heard his name come up a few times and we must be careful that we are not targeting legislation for a specific person. Let us be careful of that as well. That is why HRS 205A is so important because it is an overview of what the State believes as well as our State constitution believes what the Counties should do in the preservation of our coastal resources. Rather than targeting specific developers...because Mr. Kagawa is exactly right. You pass a Bill that satisfies the need on the north shore and then it affects the westside properties. That is why I think HRS 205A is the guiding document. We use that to make sure that we are in compliance with that and then you let the chips fall where they may. If we could follow up on the County Attorney's request, and if we have not, please send one over. Thank you.

Chair Bynum:

Thank you. Councilmember Yukimura.

Ms. Yukimura: I just want to respond to Councilmember Rapozo's concern and to Ms. Robeson's concern. We have with us in our working group two (2) County Attorneys, our attorney, Council's Attorney as well as Deputy County Attorney Ian Jung, and they always object whenever they think something is not legal. I believe it is legal but I think it is good to get a formal opinion about that so I support Councilmember Rapozo's follow through on that. If there is no further discussion, I am ready to make a motion to defer.

Chair Bynum:
Councilmember Hooser.

I think there will be further discussion.

Mr. Hooser: As a non-committee member, I appreciate the opportunity to speak. I want to add my thanks to Councilmember Yukimura for all of the hard work that she has put into it and truly applaud Councilmember Chock for stepping up because it is a tremendous amount of work. I am really pleased to see him working with Councilmember Yukimura on this. I just have a few concerns that I will share. Some of the people have expressed concerns about the make up of the group and I agree that we need working groups to help assist with their expertise and provide guidance or suggestions to Councilmembers. But in this particular group the Land Use Research Foundation, it is their mission to maximize the benefits to their members which are the largest landowners in the State and so it is understandable that they have a perspective and a bias and an agenda for that and they get paid to do that and they have tremendous amount of resources available to them. One of the attorneys in the working group is a paid lobbyist and attorney. He also has a fiduciary relationship to maximize the benefits for his clients; he is on the group also. Landowner representatives whose fiduciary responsibility is to their bosses and we have some volunteers from the community who I applaud for showing up. I do have some concerns sometimes that it is a bit lopsided. I agree that we should be looking out for the interests of the entire island. We want to protect the westside and the

eastside and from what I gather the benefits will extend to everyone. We certainly should keep that in mind. My concern is of course that we have an Ordinance that is legal but that is not my only concern. My concern is that it is an Ordinance that looks out for the best interest of the public and future generations. The County Attorney's Office as qualified, competent, and as hardworking as they are, often times look at the interest of the County as an entity and protecting it from lawsuits and looking at the law and not looking necessarily at what is in the best interest of the people. We look at the public access issues that we have been dealing with and I think it is just the way it works sometimes and so and I think we need to look out for the best interest of the public and I believe that aesthetics, view plains and other considerations have just as much rational basis for lawmaking. The impacts for this line that is drawn, a setback line, will have a variety of impacts so we need to look at those impacts and maximize in my opinion the benefits to the people. I agree with what was said earlier too that we should not target any particular landowner, certainly. However, we need to be very cognizant of the impacts of any changes we are making on those landowners that would negatively impact the public interest that exists right now. Thank you, Committee Chair for the opportunity to provide those remarks.

Chair Bynum: Other comments? I am going to go to Councilmember Chock and then Councilmember Rapozo.

Mr. Chock: I want to thank everyone for the support and recognizing my participation. I want to clarify just for the record that I have attended, maybe three (3) of them, but caught mostly the tail end of them. It is a complex issue, there are a lot of details and so I have wanted to learn more and so every opportunity I have, I have try to attend to listen, hear, and attend some of the excursions. In no means have I been part of the working group so to speak doing the hard labor but hopefully I can continue. It sounds like it is more of a push to continue or expand that. The other part of it that has not been talked about because I do agree with all of my colleagues is really what is workable for our Planning Department. This is something that they have to be able to implement and enforce and the feedback that I am getting is that the original Bill is not. That there are some things that need to be done and so that is one (1) of the big issues that we need to address. I keep hearing let us just receive it, let us just receive it but let us agree upon what it is we can change in order to make this easier for us to operate on. That is the issue with bills. The conditions change and we have to be able to change with them. The needs change and then the people operating them as well. More work needs to be done here and I am happy to defer it. Thank you.

Chair Bynum: Councilmember Rapozo.

Mr. Rapozo: Thank you. I just wanted to follow-up on what Mr. Hooser said about that it is not just about getting a bill that is legal. I would agree with that one hundred percent (100%) but that is the first threshold in my

opinion. If you cannot get it passed that then it needs to stop. The other thing is simple questions that come to my mind when we start dealing with a coastal management bill or any type of bill that could be impacted by HRS 205 and what we are doing with this Bill does it in fact, and I will take this straight out of HRS 205 in the policies, "Does it in fact preserve, maintain, and were desirable improve shoreline, open space, and scenic resources?" That is a vital part of HRS 205, you cannot pretend it is not there. As we work on the County's needs and what we believe...and I agree with Mr. Chock, we have to have a Bill that is enforceable by the Planning Department and if there are things in the existing Bill...and I know that there are because I have met with Planning that simply cannot be enforced that needs to be fixed immediately. We also have to keep in mind what HRS 205 says and not just the shoreline. I disagree that we can look at the other components of HRS 205 in different bills. If this Bill amendment conflicts in any way with HRS 205, in my opinion, it cannot go and that is what I am saying. If it is going to be tied to the SMA it should be because I believe that SMA is a separate issue but it is a part of HRS 205 so I do not anticipate or expect putting a SMA issue into this Bill but we cannot have dueling laws on the books. This one will okay a practice that is prohibited in another Bill. We cannot do that. That is why I believe the legality is number 1 and after that we move forward but I think we need to be cognizant of HRS 205 and I think that should be paramount as we move forward. Thank you.

Chair Bynum: Continuing the dialogue, Councilmember Yukimura.

Ms. Yukimura: So I just want to say that protection of resources, property, and life are the key motive that I have acting as a Councilmember. When I came back from law school in 1974, I was the one who worked with Life of the Land and the Council of Presidents to pass the Shoreline Protection Act at the State level which resulted in the SMA permit system. And then when Caren Diamond came to me...I cannot even remember, I think around 2002 and said that we need to extend the setback from the standard twenty feet (20') from the shoreline to more than that, that is when we introduced the Bill that originated in the first law, Ordinance No. 863. This Bill now is incorporating the coastal data from Chip Fletcher's study to be even more precise and more protective. That has been the overall goal but as we know the coastline is very varied and we need to make it workable so that it can protect. That is what we are all working on and it has been a long journey but I think we are almost there. The input from the citizen group, Barbara and Caren has been constant and we have constantly in Committee responded to it and so we are in the process of responding to Carl Imparato's input about applicability because we want this Bill to be a good Bill.

Chair Bynum: Any other comments? I will close with a few and then we can entertain a motion to defer. I want to say that this is a bill that I am very proud of. I was pleased to be part of the original Bill, and the dialogue, and it

was rich, and it was a wonderful learning experience. It is one of the best bills in the country and we went through a similar process and came out with a really good outcome but now we have lived with this Bill. All of the comments here are correct. I applaud Councilmember Rapozo for making sure that we get these questions in writing but in the long run opinions are opinions. Councilmember Nakamura as the Planning Chair started this process, I am very supportive of the process that has happened here to have working groups of interested parties working together and you seek balance but it has been said here they are not decision makers. Councilmember Hooser's comments I agree with. We know that anything from Land Use Research Foundation (LURF) is going to have a very strong perspective in this and it is useful because we know where they are coming from. Attorneys represent their clients and they are being paid while they are at these meetings, I have no problem with that as long as we all know that this is a working group and what everyone's roles are, it is a very valuable process but it has to at some point come to an end. It should never be the expectation that those kinds of groups are going to come to a consensus and end in total agreement. If they do, is that not wonderful? You come closer together by understanding other people's positions. It is great that Councilmember Chock is going to step up and fill the space and it is like, "oh, wow this is technical," but having fresh eyes and what we know about is a very valuable thing. And what we know from seeing Councilmember Chock here is that he is all about trying to find that balance and moving processes forward in ways that are appropriate. That is what I have learned from seeing him in this process so far. I think that is a very valuable thing. I must say also that this is part of a package of Bills that deal with the coastal environment and they have to be looked at in totality and this Bill, even though its primary focus is coastal hazards, and this is from Caren's testimony in HRS 205A, "in implementing the objectives of coastal zone management program the agency shall give full consideration to ecological, cultural, historic, aesthetic, recreational, scenic, and open space values and coastal hazards as well as need for economic development. So this Bill is about those things and I thought it was great that something on a rocky bluff would have to be at least one hundred feet (100'). I do not want to see that change but I am going to listen to the opinions, I am going to listen to the working group, we are going to bring this process of the working group to a conclusion at a reasonable time with this new energy and then we will bring, if there is disagreements about...but what I want to say that there are things that we have already agreed on this Bill that improve it, that make it better. It is the nature of our process that will focus on the areas that we do not have agreement, and we are concerned about and that is why we have the Council process in the end to sort those out in a public and transparent way. This is all good but it is also time to move forward and bring this to a conclusion this year, not next year, I hope. Thank you very much.

Upon motion duly made by Councilmember Kagawa, seconded by Councilmember Chock, and unanimously carried, Bill No. 2461, Draft 1, was deferred to July 2, 2014 Planning Committee meeting.

There being no further business, the meeting was adjourned at 10:18 a.m.

Respectfully submitted,



Lori L. Marugame
Council Services Assistant I

APPROVED at the Committee Meeting held on July 2, 2014:



TIM BYNUM
CHAIR, PLANNING COMMITTEE